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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re K.R., a Person Coming Under the  
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

K.R.,

Defendant and Appellant.

A124076

(Contra Costa County  
Super. Ct. No. J0801228)

K.R., a minor, appeals from jurisdictional and dispositional orders of the juvenile court sustaining two felony firearm allegations and committing him to a youth ranch for a nine-month program, followed by probation. His counsel has filed a brief seeking our independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436 to determine whether there are any arguable issues on appeal. We find there are none and affirm.

**BACKGROUND**

***Prosecution Case***

K.R. and a number of other summer school students were riding the bus to Pinole Valley High School. One of the students, J.W., was sitting next to K.R. in the back of the bus when he heard a clicking sound. He looked down and saw a gun in the space between his seat and K.R.'s. The gun was about three feet long and looked like a rifle with a scope.

K.R. took the magazine out of the gun and tossed it to another boy, who tossed it back. K.R. replaced the magazine, and J.W. saw that it had bullets in it. K.R. said he was “going to get somebody named Damariee.” A short time later, J.W. moved to the middle of the bus.

S.N. was also on the bus that morning. She testified that K.R. said he wanted to show her something, and showed her a big black gun. K.R. put the gun on the floor and also showed it to other boys in the back seat. S.N. saw him remove the clip from the gun. When the bus arrived at school, she saw K.R. exit and walk towards two boys in a gray Lexus that belonged to another student, J.M. She did not see what K.R. did with the gun.

J.W. called his aunt to take him home from school. His aunt called the police, who arrived at the school and put it on a lockdown. J.W. identified K.R. as the boy he had seen with the gun.

D.B., another student, did not see a gun or anything suspicious on the bus that morning. But he heard another student say there was a gun at school and describe it as a “choppa,” which D.B. understood to mean it was an AK-47. The other student said the gun was sold for \$400. D.B. walked towards his first class and ran into K.R., who was counting some money. D.B. watched K.R. count out \$400.

Officers removed K.R. from his classroom and took him to the school resources office. Officer Lopez watched him there for 20 or 30 minutes, until Detective Cauwels entered the room. K.R. did not ask for an attorney. Detective Cauwels asked K.R. if he had any cash, and told him to stand up to be searched. When the detective reached for K.R.’s rear pocket the boy spun away from him, and they scuffled briefly. Detective Cauwels found \$400 in K.R.’s back pocket. At that point, the detective advised K.R. of his *Miranda* rights and interviewed him.

K.R. was interviewed twice more that evening at the Pinole Police Department. He told police several versions of the morning’s events. First, K.R. said someone named J.M. offered him \$100 to hold a gun for him. Later, he said someone named Greg brought the gun onto the bus and that K.R. picked it up and popped the clip out to show

people. K.R. then said that he brought the gun to school to sell to J.M. for \$400, and that he did sell it as planned in the school parking lot.

### *Defense Case*

The bus driver did not see anything suspicious the morning of July 18. Defense witness T.W., a friend of K.R.'s, testified that he sat near K.R. on the bus and did not see a gun. The two boys walked together from the bus to an area near the football field, where they stayed about 15 minutes before T.W. left. He did not see K.R. walk to the school parking lot or approach a gray Lexus and did not see J.M. K.R.'s mother testified she gave K.R. \$420 in cash on July 17th to buy a cell phone, clothes, bus fare and lunch. She also said K.R. lies when he feels it can benefit him in some way.

K.R. testified that he did not have a gun on the bus or at school. He did not have an ammunition clip, and he did not show anyone an object that could have been mistaken for a clip. He was carrying \$430 the day of the incident, including the money his mother gave him. When he got off the bus he and T.W. walked together toward the gym. They walked through the parking lot but did not stop and speak with anyone. He and T.W. met another friend in the parking lot, and the three of them went behind some bushes to shoot dice.

K.R. testified that he asked Detective Cauwels for an attorney before he was questioned. Based on this testimony, defense counsel moved to exclude all of K.R.'s statements. Counsel explained that he did not bring the motion earlier because he had not previously heard that his client asked for an attorney, and nothing in the discovery, police reports or testimony so indicated. After further questioning and cross-examination, the court denied the motion.

K.R. testified that he repeatedly lied to police about the incident to "throw [the detectives] off their case," to tell them what they wanted to hear, and so that Detective Cauwel would not "put his hands on me again." He described a trick he learned from his father to make a facial expression during a videotaped interview that would signal to his lawyer and his father that he was not telling the truth. On cross-examination, he testified

that he lies a lot but he can also tell the truth, that he knew that he could not have a rifle at a school because “there are rules against it” and because he was on probation.

The Contra Costa County District Attorney filed a petition charging K.R. with one count of possession of a firearm by a minor and one count of possession of a firearm in a school zone. Following the contested jurisdictional hearing, the court sustained both counts. K.R. was already on probation in Solano County for a sustained misdemeanor charge of assault by means likely to produce great bodily injury with a gang enhancement. While in custody in Contra Costa County waiting his jurisdictional hearing, K.R. threatened staff saying “ ‘I’ll smoke you,’ ‘you better let me out of my room bitch,’ ‘I’m a ghetto superstar,’ ‘you better ask somebody about me nigga,’ and ‘ya’ll muthafuckas will get your heads knocked! Be glad I don’t have a pistol in here.’ ” K.R. admitted to the probation officer that he threatened another student and that “if he wanted [L.] killed, he would have done it.”

Following the recommendation of the probation department, and consistent with the request of defense counsel, the court committed K.R. to a nine-month program at the Orin Allen Youth Rehabilitation Facility, followed by probation with various conditions. K.R. filed a timely appeal.

## **DISCUSSION**

Defense counsel represents that she advised her client of his right to submit supplemental written argument on his own behalf and to request that counsel be relieved. The minor has not done so. This court has reviewed the entire record on appeal. There are no legal issues that require further briefing.

**DISPOSITION**

The judgment is affirmed.

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Siggins, J.

We concur:

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Pollak, Acting P.J.

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Jenkins, J.